

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5261 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and SD/-

MR.JUSTICE A.R.DAVE

SD/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

M/S. YASHWANTRAI DAHYABHAI

Versus

CENTRAL BOARD OF DIRECT TAXES

Appearance:

MR SN SOPARKAR for Petitioner

NOTICE SERVED for Respondent No. 1

MR RP BHATT for Respondent No. 2

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 02/11/98

ORAL JUDGEMENT

(Per: R.Balia, J.)

The petitioner has challenged Annexure-I dated 14.1.1990 by which the following order was communicated:

"I am directed to refer to your letter dated 7.10.1988 on the subject mentioned above and to state that the Board has considered the petition & regret its inability to accede to the request of the petitioner for condonation of delay."

According to the petitioner, for Assessment year 1985-86 while the tax liability under the Income Tax Act was only to the tune of Rs.2,529/-, they had already paid a sum of Rs.22,543/- as tax by way of deduction at source. Under the circumstances, the petitioner was entitled to refund of Rs.20,014/-. However, due to inadvertence and due to the fact that no tax was, in fact, payable by the petitioner, no return could be filed for assessment of income by the petitioner upto 31st March 1988. As there was no assessment, the question of refunding the amount as due as a result of assessment did not arise. However, the petitioner moved an application dated 31.8.1988 to the Board for condoning the delay in making the application for refund and refunding the amount overpaid by him. This was done in furtherance of the Circular issued by the Board in exercise of its power under Section 119 to the effect that Assessing Officer was authorised to entertain application for refund of amount by condoning the delay in the circumstances mentioned in the Circular provided the refund claim was upto Rs.10,000/- and where the application for refund was for more than Rs.10,000/-, discretion was kept with the Board. After eliciting certain information by correspondence, the petitioner was communicated the aforesaid order rejecting their application. The petitioner has challenged the said order inter alia on the ground that the order is not a speaking order.

2. The learned Counsel for the petitioner drew our attention to a Bench decision of this court in KUSUMBEN M. PARIKH v. CENTRAL BOARD OF DIRECT TAXES in Special Civil Application No.5305 of 1991 decided on 2.7.1998 wherein a communication by the Board dated 30.10.1990 saying "I am directed to state that the Board has considered your petition and declines to interfere in the matter" was held to be suffering from the vice of non-speaking order. In that case, the court held as under:

"As extracted above, the orders are cryptic in nature and except stating that the Board declined to interfere in the matter, no reason or ground whatsoever has been recorded in support of the decision.....It is clear that the Board was also requested to exercise power under clause (b) of sub-section (2) of Section 119 of the Act and it was incumbent on the Board to consider the application in the light of the prayer and to pass appropriate order."

Making reference to two decisions of the Supreme Court in the cases of JASWANT RAI & ANOTHER v. CENTRAL BOARD OF DIRECT TAXES AND REVENUE & OTHERS reported in 231 ITR 745 (SC) and KRISHNALAL v. UNION OF INDIA reported in (1998) 2 Supreme Court Cases 392, the court further held that, as is clear in both the cases, the petitioners had made applications setting out the ground under which powers are to be exercised by the Board; the Board rejected both the applications without recording reasons. The Hon.'ble Supreme Court has held that such powers are quasi-judicial in nature and it would be appropriate if it directs the Board to reconsider the applications of the petitioners and to decide them in accordance with law.

3. The facts of the present case are not different in any manner. To this position, the learned Counsel for the Revenue also does not raise any dispute.

4. In the aforesaid circumstances, following the above decision, the order at Annexure-I dated 14.1.1990 is quashed and the Board is directed to reconsider the application of the petitioner and to decide the same in accordance with law in the light of the observations made in KUSUMBEN's case (supra). The applications shall be decided as far as possible within a period of two months from today. Rule is made absolute accordingly. There will be no order as to costs.

(KMG Thilake)

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